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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/050,907	01/18/2002	Willie Stroup	02514.0007.NPUS01	5808

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HOWREY SIMON ARNOLD & WHITE LLP
BOX 34
1299 PENNSYLVANIA AVENUE NW
WASHINGTON, DC 20004

EXAMINER	
MENON, KRISHNAN S	

ART UNIT	PAPER NUMBER
1723	6

DATE MAILED: 02/26/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/050,907	STROUP, WILLIE
	Examiner	Art Unit
	Krishnan S Menon	1723

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *12 June 2002* .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-21* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-15* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☒ Claim(s) *16-21* are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) *4,5* .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

I. Claims 1-15, drawn to apparatus (sludge filter), classified in class 210, subclass 321.6.

II. Claims 16-21, drawn to filtration process, classified in class 210, subclass 609.

The inventions are distinct, each from the other because of the following reasons:

Inventions II and I are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the process as claimed can be practiced by another materially different apparatus, like a centrifugal filter.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

During a telephone conversation with Michael Bell, attorney of record on 2/11/03 a provisional election was made without traverse to prosecute the invention of group I, claims 1-15. Affirmation of this election must be made by applicant in replying to this Office action. Claims 16-21 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4,6,7, and10-15 are rejected under 35 USC 102 (b) as being clearly anticipated by Winter et al (US 5,277,814)

Winter teaches an apparatus for reducing liquid content in a mixture comprising (fig 1) a holding chamber (10, col 2 lines 19-42), a conduit for removing liquid from the chamber (14), a filter separating the conduit from the chamber (12), a membrane forming a substantially air tight seal over the chamber (fig 1, col 6 lines 1-6), a means for reducing pressure in the conduit for drawing liquid from the chamber through the filter in to the conduit (col 6 lines 50-60) as in instant claim 1. The chamber further comprises heating means disposed within the walls of the chamber as in instant claims 2-4 (col 7 lines 34-40). The apparatus further comprises air injectors disposed within the chamber as in instant claims 6 and 7 (col 5 lines 60-68; col 2 lines 27-40); moisture collecting tank disposed to receive liquids as in instant claims 10 and 11 (14,15 and 23 fig 1); temperature monitoring and control means as in instant claims 12 and 13 and the temperature is maintained between 100 and 200 °F (col 2 lines 62-68; col 7 lines 17-40) as in instant claim 15. Regarding claim 14, limitation based on the size of the apparatus, or a scaled down version, is not patentable by itself, since there is no structural difference from the original apparatus. Claims directed to apparatus must be distinguished from the prior art in terms of structure rather than function. *In re Danly,* 263 F.2d 844, 847, 120 USPQ 528, 531 (CCPA 1959). "[A]pparatus claims cover what a device *is*, not what a device *does*." *Hewlett-Packard Co. v. Bausch & Lomb Inc.*, 909 F.2d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990). (emphasis in original)

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* v. *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

1. Claims 5 and 8 are rejected under 35 USC 103 (a) as being unpatentable over Winter (814).

Winter teaches all the limitations of claims 5 and 8 as in claims 2 and 7 above, except that the heating means is disposed within the membrane and the membrane comprises air injector. However, Winter teaches installing heat exchange means along the walls of the chamber, which could include the membrane, and using air jets for mixing (col 7 lines 34-40, col 5 lines 60-68). It would be obvious to one of ordinary skill in the art at the time of invention to dispose the heating means of Winter within the membrane to improve the convection heating in the chamber. It would also be obvious to one of ordinary skill in the art at the time of invention to have the air jets at the membrane to further enhance agitation as taught by Winter (col 5 lines 60-68).

2. Claim 9 is rejected under 35 USC 103(a) as unpatentable over Winter (814) in view of Eichler (US 5,118,427).

Winter teaches all the elements of claim 9 as in claim 8 above and including agitating means (col 5 lines 58-68), except that the agitating means is not vibrational. Eichler (427) teaches vibrating means for agitating (col 3 lines 17-45). It would be obvious to one of ordinary skill in the art at the time of invention to vibrate the membrane as taught be Eichler in the teachings of the separating apparatus of Winter to keep the liquid mixture viscosity low for faster removal of liquids.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Martin (US 4,551,243) and dibble et al (US 4,668,388) also teach a sludge separator in a sealed enclosure using a vacuum filter as in instant claim 1.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Krishnan S Menon whose telephone number is 703-305-5999. The examiner can normally be reached on 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda L Walker can be reached on 703-308-0457. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

Krishnan S. Menon
Patent Examiner
February 19, 2003

W. L. WALKER
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1700